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October 27, 1998

U. S. Department of Transportation Dockets
Docket No. FAA-1998-4458 - 8
400 Seventh Street, S.W.
Room Plaza 401
Washington, DC 20590

Re: Notice No. 98-13

Dear Sir or Madam:

British Airways is submitting this response to the referenced notice of proposed rulemaking (NPRM) solely to clarify the extent of the proposed prohibition on the transportation of devices designed to chemically generate oxygen. More specifically, British Airways seeks confirmation that the proposed prohibition would not apply to foreign air carriers.

The language of the NPRM indicates that the FAA did not intend that the NPRM apply to foreign carriers. For example, the NPRM "Summary" states that the proposed ban would apply to "certain domestic operations." (63 ~~Fed. Reg.~~ Fed. Reg. 45912).section entitled "Today's Proposed Action" includes references to: "domestic-passenger carrying operations", "domestic passenger-carrying aircraft", "domestic aircraft" (63 Fed. Reg. 45914), as well as to "domestic all-cargo aircraft" and "domestic all-cargo operations" (63 Fed. Reg. 45916). By contrast, the only reference to foreign carriers appears in the "International Compatibility" section which states: "Moreover these proposed rules, if adopted, would not apply to foreign operators."

Although the quoted language demonstrates a clear intent that the proposed prohibition not apply to foreign air carriers, the NPRM proposes to incorporate the proposed prohibition in a new section 91.20 that would apply to foreign air carriers. Pursuant to section 91.1(a), Part 91 governs "the operation of aircraft... within the United States, including the waters within three nautical miles of the U. S. coast." Moreover section 91.1 (b) specifies that "Each person operating an aircraft in the airspace overlying the waters between 3 and 12 nautical miles from the coast of the United States shall comply with §§ 91.1 through 91.21." Accordingly, contrary to the stated intent that the NPRM not apply to foreign carriers, if the NPRM is adopted as proposed, the

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prohibitions set forth in the proposed new section 91.20 would apply to foreign carrier operations in U. S. airspace -- i.e. to all foreign carrier flights to and from the United States.

British Airways respectfully requests that any final rule issued in this proceeding eliminate this inconsistency by modifying the proposed section 91.20 to clarify that it is not applicable to foreign air carriers.¹

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in dark ink, appearing to read "Don Hainbach", with a large, sweeping flourish above the name.

Don H. Hainbach
Attorney for British Airways

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¹ If the FAA should determine, notwithstanding the contrary intent stated in the NPRM, that the proposed prohibition will apply to foreign air carriers, it first would need to issue a new NPRM to alert foreign carriers that the proposed prohibition is intended to apply to them and to afford them the notice and comment opportunities guaranteed by the Administrative Procedures Act.